

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA,)

) Case No. 1:05CR00036

)

v.)

OPINION AND ORDER

)

STEVEN CRAIG FROST,)

By: James P. Jones

)

Chief United States District Judge

Defendant.)

Steven Craig Frost, Defendant, Pro Se.

The defendant, Steven Craig Frost, has filed a motion seeking copies of transcripts of the plea and sentencing hearings conducted in this case. Frost states that he needs these transcripts in conjunction with the Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C. § 2255 (West 1994 & Supp. 2006), recently filed in this court, as Case No. 7:06CV00667. Upon review of the record, I find that Frost is not entitled to free transcripts at this time.

An indigent defendant who is pursuing a motion to vacate, set aside or correct sentence, pursuant to § 2255 or related proceeding, is entitled to free transcripts from his criminal proceedings only if the court finds that the defendant's motion is not frivolous and the transcript is needed to decide the issues presented in the motion. *See United States v. MacCollom*, 426 U.S. 317, 326 (1976) (applying 28 U.S.C.A. § 753(f)); *United States v. Shoaf*, 341 F.2d 832, 833-34 (4th Cir. 1964) (indigent

defendant must show some need for transcript beyond his mere desire to comb the record in hope of discovering errors to raise in habeas).

Frost pled guilty, pursuant to a written plea agreement, to two drug offenses and a related firearms offense and did not appeal. The plea agreement included a provision whereby Frost waived his right to file a § 2255 motion. In his § 2255 Motion, Frost alleges that his guilty plea was invalid for various reasons, all of which are directly contradicted by the language of his written plea agreement. Based on these contradictions, I cannot find that Frost's § 2255 motion is not frivolous and as such, I cannot at this time find that he is entitled to free transcripts under § 753(f).¹

For the stated reasons, it is hereby **ORDERED** that the motion is hereby **DENIED**.

The Clerk will send copies of this Opinion and Order to the defendant at his place of confinement and to the United States Attorney's Office.

ENTER: November 13, 2006

/s/ JAMES P. JONES
Chief United States District Judge

¹ The government has not yet had an opportunity to respond to Frost's Motion and will likely file a motion to dismiss on the ground that Frost waived his right to bring this action. In support of the waiver defense, the government will arrange for the plea hearing to be transcribed for the court's review.